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In re Application of SAMUHEL et al.
Application No.: 10/551,642
PCT No.: PCT/AU04/00407
Int. Filing Date: 31 March 2004
Priority Date: 31 March 2003
Attorney Docket No.: Q90647
For: METHOD AND APPARATUS FOR
FLUID DISPENSATION,
PREPARATION AND DILUTION

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is issued in response to applicants' "Petition for New Office Action and Withdrawal Holding of Abandonment under MPEP Section 7.11.03(c)(I)" filed 03 May 2007, treated herein as a petition under 37 CFR 1.181 to withdraw the holding of abandonment based on applicants' purported failure to receive the Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 23 May 2006. No petition fee is required.

BACKGROUND

On 31 March 2004, applicants filed international application PCT/AU04/00407 which designated the United States. On 14 October 2004, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 03 October 2005.

On 27 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment for the basic national fee; a copy of the international application; and a preliminary amendment.

On 23 May 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required.

On 08 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the

application was abandoned with respect to the United States based on applicant's failure to file a response to the Notification Of Missing Requirements.

On 03 May 2007, applicants filed the "Petition under 37 CFR 1.181 to Withdraw Holding of Abandonment and to Issue Another Notice of Missing Requirements" considered herein.

DISCUSSION

In the present petition, applicants argue that the holding of abandonment should be withdrawn because applicants never received the Notification Of Missing Requirements mailed on 23 May 2006. Section 711.03(c) of the MPEP sets forth the requirements for such a petition:

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

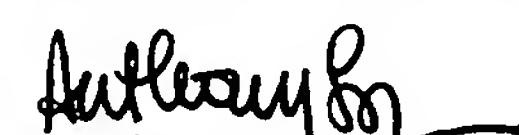
Here, the petition contains the required statements from the practitioner that the Notification Of Missing Requirements was not received and that a search of the file jacket and docket records indicates that the Notification Of Missing Requirements was not received. Applicants have also attached a copy of the docket records where the Notification would have been entered had it been received, along with a statement from counsel explaining the docket records and how they are maintained.

Applicants have therefore satisfied the requirements of a grantable petition to withdraw a holding of abandonment based on the failure to receive an office action. Accordingly, the Notification Of Abandonment mailed on 08 February 2007 is appropriately vacated.

CONCLUSION

Applicants' Petition to Withdraw Holding of Abandonment is GRANTED and the Notification Of Abandonment mailed on 08 February 2007 is hereby VACATED.

This application is being forwarded to the National Stage Processing Branch of the International Division for treatment in accordance with this decision, that is, for preparation and mailing of the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905).


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